

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD AT THE
COUNCIL OFFICES, STATION ROAD, WIGSTON ON THURSDAY, 19 NOVEMBER 2015
COMMENCING AT 7.00 PM**

<u>IN ATTENDANCE:</u>		
Chair - Councillor L A Bentley Vice-Chair - Councillor Mrs L M Broadley		
COUNCILLORS (12):		
G A Boulter	D A Gamble	R E R Morris
F S Broadley	Mrs S Z Haq	T Barr
D M Carter	J Kaufman	Dr T K Khong
R F Eaton	Mrs H E Loydall	B Fahey
M H Charlesworth (Speaker) Miss M V Chamberlain (Speaker)		
OFFICERS IN ATTENDANCE (3):		
S J Ball	Mrs A E Court	C Forrett
OTHERS IN ATTENDANCE (3):		
B Rayner	Ms C Beverley	S Rahman

Min Ref.	Narrative	Officer Resp.
37.	<p><u>APOLOGIES FOR ABSENCE</u></p> <p>An apology for absence was received from Councillors G S Atwal and B Dave.</p>	
38.	<p><u>DECLARATIONS OF SUBSTITUTIONS</u></p> <p>Councillor B Fahey substituted for Councillor B Dave.</p>	
39.	<p><u>DECLARATIONS OF INTEREST</u></p> <p>Councillor R E R Morris declared that a family member lived in close proximity to the Cuisine of India restaurant and that he knew of and spoken to a number of objectors who are signatories to the Petition at agenda item 5 in respect of planning application number 15/000381/FUL.</p> <p>Councillors L A Bentley and R F Eaton declared that they had met with a number of objectors in the recent weeks preceding the meeting in respect of planning application number 15/000381/FUL.</p> <p>Councillor Mrs H E Loydall declared that there were Members present, herself included, who during their respective terms in the Office of Mayor for the Borough have had the opportunity to formally attend charity functions hosted at the Cuisine of India restaurant in respect of planning application number 15/000381/FUL.</p>	

	All the aforementioned Members and Members otherwise concerned stated that their interests were non-pecuniary and they attended the meeting with a non-prejudicial and open mind.	
40.	<p><u>MINUTES OF THE PREVIOUS MEETING HELD ON 22 OCTOBER 2015</u></p> <p>RESOLVED THAT:</p> <p>The minutes of the previous meeting of the Committee held on 22 September 2015 be taken as read, confirmed and signed.</p>	
41.	<p><u>PETITIONS AND DEPUTATIONS</u></p> <p>Two Petitions were received by the Committee objecting to planning application number 15/00381/FUL (Cuisine of India, Kelmarsh Avenue, Wigston, Leicestershire, LE18 3QW) as set out at agenda items 5a and 5b respectively (at pages 5 - 7).</p>	
41A.	<p><u>PETITION OBJECTING TO THE PLANNING APPLICATION 15/00381/FUL</u></p> <p>No local government elector of the Borough who was a signatory thereof presented nor spoke upon the Petition at agenda item 5a.</p>	
41B.	<p><u>PETITION OBJECTING TO THE PLANNING APPLICATION 15/00381/FUL</u></p> <p>Mr Syed Rahman, owner of the Cuisine of India restaurant, presented and spoke upon the Petition at agenda item 5b.</p> <p>Mr Rahman stated that significant concerns arose from the planning proposals as outlined (at pages 16 - 28) which would adversely impact on the running of his business, notably: the confinement and limiting of space for customers in the main restaurant seating and bar areas; the loss of restaurant amenity/utility-areas and respective smoking and green-outdoor areas; the reduction in customer car parking facilities; and the potential for congregations of people forming on Kelmarsh Avenue. He warned that the planning proposals, if granted, would result in the temporary and, or, permanent closure of the restaurant and would harm the vitality and viability of the local area and businesses therein and, as such, invited Members to refuse planning permission.</p>	
42.	<p><u>REPORT OF THE PLANNING CONTROL MANAGER</u></p> <p>The Committee gave consideration to the report and appendices (at pages 8 - 28) as delivered by the Planning Control Manager, together with the supplementary agenda update (at pages 1 - 2) as circulated at the meeting, which should be read together with these minutes as a composite document.</p> <p>1. Application No. 15/00275/FUL – 2 Bainbridge Road</p> <p>The Planning Control Manager summarised the proposals as detailed in the report (at pages 9 - 15) adding that since the submission of the original application, revisions have been made to remove an element from the proposed garage extension and to reduce the roof size so to remain in-</p>	

keeping with the street scene. He noted that the application was brought before this Committee due to the number of representations received as were summarised and set out in the report (at pages 10 - 11). He stated that the objections received were not material to warrant refusal of planning permission and that the application accorded with the relevant Supplementary Development and Local Plan policy documents.

Councillor Mrs H E Loydall enquired as to whether there was sufficient space for off-street parking commensurate to the size of the four-bedroom property. The Planning Control Manager stated that there was ample provision in this respect towards the front of the property as would be reasonably expected for such a residential dwelling.

Councillor G A Boulter enquired as to whether the size of the garden at the dwelling would satisfy planning and policy requirements subsequent to the erection of the proposed extension. The Planning Control Manager stated that the obtaining requirements would be satisfied.

The application was moved by Councillor J Kaufman and seconded by the Chair.

RESOLVED THAT:

The application be permitted subject to the conditions as outlined in the report (at pages 13 - 14).

Votes For	13
Votes Against	0
Abstentions	1

2. Application No. 15/00381/FUL – Cuisine of India

Councillor J Kaufman questioned whether it was advisable to consider the application before this meeting of the Committee in view of the Local Planning Authority's suggestion to re-consult in respect of the newly enlarged planning application site as outlined in the supplementary agenda update (at page 1).

The Planning Control Manager summarised the above-referenced amendment in the context of recent discussions held between the Highways Authority and the Applicant. He stated these had resulted in the inclusion of 15 car parking spaces not previously part of the application site on a shared-use basis and thus due to the site's enlargement, and in accordance with planning policy, required a further consultation of immediate neighbours. He stated that due to the nature of the amendment involving no physical works, and subject to Members' discretion, it would be reasonable to consider the application at this meeting of the Committee and, insofar as Member's being minded to either permit or refuse the application, to delegate authority to Planning Officers to return the application after a further consultation period subject to no further substantive revisions being received in relation to that amendment.

Councillor J Kaufman proposed that a further consultation be held before the application was to be brought before this Committee for consideration.

The Chair put the proposal before Members to resolve whether the application should either be deferred to a subsequent meeting of this Committee pending a further consultation or whether to proceed to consider the application before this meeting of the Committee.

RESOLVED THAT:

The application proceed to be considered before this meeting of the Committee.

Votes For Deferment	6
Votes Against Deferment	8
Abstentions	0

Mr Ben Rayner, Chartered Town Planner of Peter Brett Associates, spoke upon the application on behalf of the applicant NewRiver Retail. Mr Raynor stated that it was the applicant's preference to retain existing uses of the land owned. It was said that the application sought to provide an additional community facility upon the surplus land at the site therefore serving to better secure the long-term future of the restaurant in lieu of its loss through any possible conversion. Mr Raynor stated that the scheme fully accorded with both local and national planning policies in respect of an appropriate and sustainable site location designed to respect the area's character and maintain the established building-line along Kelmarsh Avenue. He stated that a number of revisions have been submitted to address, most notably, highway concerns. These included the internal relocation of the store's ATM and the applicant-funded Traffic Regulation Order (TRO) to discourage inconsiderate parking by patrons. The scheme was said to seek to minimise the impact upon neighbouring properties' amenities by increasing boundary distances and incorporating additional landscaping and acoustic fencing to reduce any discernible effect. Mr Raynor stated that the proposed store was located in a designated local centre area satisfying all relevant retail tests, adding that it would contribute to the community's economy insofar as retaining expenditure locally, creating 20+ jobs and attracting investment as well as diversifying consumer-choice and boosting demand.

Councillor Mrs H E Loydall sought a point of clarification from the spokesperson as to whether it was the applicant's intention to convert the restaurant should Members be minded not to permit the application. Mr Raynor advised that proposed scheme was the applicant's preferred use of the land as opposed to the restaurant's conversion.

Ms Christine Beverley, Retail Operations Director of Rippleglen Limited trading at 34-42 Kelmarsh Avenue, spoke upon the application as an objector. Ms Beverley stated that submissions had been circulated by Astill Planning Consultants on behalf of Rippleglen Limited to all Members in respect of planning and development aspects of the application. With reference to the applicant's planning statement describing the premises trading at the above address as a "newsagent", she advised that the premises was a 100 m² convenience store with 2,500+ product lines with news-related lines occupying 10% of the premises floor-space. She stated that the premises' trading partner Nisa offered a bespoke service including the daily-delivery of newspapers to 230 residences in the area and the stocking of product-lines based on consumer demand. Ms Beverley stated that the proposed scheme, if permitted, could potential divert trade away a

thriving store already serving the retail requirements of the local community and jeopardise 20 jobs primarily targeted to encourage young people into work. She further raised concerns as to the proposed scheme's wider impact upon the existing store's customer parking availability and the introduction of in-store Post Office services.

Mr Syed Rahman, owner of the Cuisine of India restaurant, spoke upon the application as an objector. With reference to the National Planning Policy Framework, Mr Rahman stated that a Retail Impact Assessment in respect of the proposed scheme's alleged harm to the vitality and viability of the local area warranted the refusal of planning permission. He further reiterated concerns in respect of the reduction in customer parking facilities, potential hazardous highway implications and delivery access arrangement and the adverse acoustic impact on neighbouring residential properties. With reference to the same Framework Policy, Mr Rahman opined that the outlined proposal was not sympathetic to the area's character and appearance. He surmised that a multiple outlet, such as the Co-operative Group ("the Co-op Group"), was surplus to local community's requirements and warned of the potential adverse economic impact such an outlet would engender in outstripping supply vis-a-vis demand.

Councillor M H Charlesworth, elected-Member for the Wigston All Saints ward, spoke upon the application. The Member stated that the proposed scheme provided no additional benefit to the local community and would potentially impact on the existing oft-frequented convenience store insofar as it had neither the size nor logistical capacity to compete with a multiple outlet. He raised concerns in respect of the Co-op Group's ethical and fair-trading policies and, with reference to the imminent closure of the Co-op Group's food outlet on Bell Street, Wigston, questioned the comparative levels of trade between the two sites. The Member asserted that the soon-to-be redundant Bell Street employees could not transfer to the proposed new store due to the Group's distinct subsidiary identities. He opined that vitality of the Cuisine of India, described as the centre of the community and hosting many charity fundraising functions, would be harmed due to the part-demolition of the restaurant amenity/utility-areas and reduction in customer parking facilities which, in addition to the provision of a store ATM, would create highway implications irrespective of any TRO and its probable lack of enforcement. He further raised concerns in respect of the proposed store's non-sympathic frontage design and the impact upon traffic congestion on Kelmarsh Avenue and Meadow Way. The Member invited the Committee to refuse planning permission citing the 1000+ objections lodged by local residents concerned about the material harm the proposal, if permitted, would cause.

Councillor Miss M V Chamberlain, elected-Member for the Wigston Meadowcourt ward, spoke upon the application. The Member stated that the high-level of public attendance at the Committee meeting was testament to the community's popular sentiment in strongly opposing the outlined proposal. She raised a concern in respect to the proposed scheme's potential endangerment to children's welfare in relation to the oft-used routes immediately surrounding the site connecting the school situated on Meadow Way and the footpath leading to Acorn Way. The Member stated that the local area was already amply served by a number of existing convenience stores nearby and that potential loss and/or relocation of the Cuisine of India restaurant would harm the community. The Member further

raised concerns in respect to the adverse acoustic impact on neighbouring residential properties and possible job losses at the existing convenience store on Kelmarsh Avenue.

The Planning Control Manager summarised the proposals as detailed in the report (at pages 16 - 28) and supplementary agenda update (at pages 1 - 2). He reported that the proposed scheme's location within a designated local centre area accorded with the principles of the National Planning Policy Framework and the Council's Adopted Core Strategy, adding that the proposal's design was of a similar small-scale and low-key outward appearance to that of the adjoining restaurant. The Planning Control Manager warned Members that the appropriate remit of the planning system did not extend to adjudication upon, among other things, competition grounds and therefore advised that any aforementioned objections raised in respect of the same would not properly constitute material planning considerations. With reference to the site's parking facility arrangements as detailed on the presentation, a reduction from 33 to 28 parking spaces was said to result in a net loss of five parking spaces and that the additional site use would inevitable increase traffic flow relative to the two business' respective operating hours and competing demands. It was reported that the Highway Authority was satisfied that there is sufficient parking arrangements to accommodate the above and that a TRO encompassing both carriageways on Kelmarsh Avenue and partly-extending to Meadow Way would allow for a free-flow of traffic. He stated that the intended planting equipment to the rear of the site was not of a noisy disposition and that the erection of acoustic fencing alongside the site's rear boundary would serve to deaden any excessive noise-levels. He reiterated that Members ought to ground their decision solely upon this application's merits and material planning considerations.

The Vice-Chair stated that she believed that the proposed scheme was being shoe-horned into an inadequate space and that the applicant's descriptor of the land as "surplus" was incorrect insofar as it served an existing use. She raised concerns as to proposal's impact on the vitality and viability of the local centre, the enforceability of any TRO and the inexpedient access of the site by heavy/light-goods vehicles (HGV/LGV's). The Member further enquired as to whether a TRO was to extend to both carriageways on Meadow Way. The Planning Control Manager advised that, subject to the on-site assessment of Highway Engineers, the TRO would be set 12m back on both carriage ways at Meadow Way to ensure the junction's clearing.

Councillor Mrs L M Broadley moved the application for refusal of planning permission.

Councillor D M Carter stated that proposed scheme's 300 m² footprint could not be aptly described as "small" in practical rather than planning terms. He opined that the scheme did not accord with the definition of a "local centre" as contained in the report (at page 17) insofar as the listed amenities already existed within the small catchment and that, if permitted, the Co-op Group's commercial impact would jeopardise the viability of the same. He rather noted that the 1000+ objections lodged defeated the notion of "servicing" a small, local catchment. The Member further sought clarification as to the number of parking spaces available on a shared-basis.

The Planning Control Manager confirmed a total number of 28 parking spaces were available with reference to the site-plan as detailed on the presentation.

The Member stated that the restaurant's capacity to provide 80-90 covers necessitated the approximate need of 24-45 parking spaces: it was said that, if reduced, this could create parking pressure points overflowing on to Kelmarsh Avenue and Meadow Way which would be inadequately addressed by a TRO, adding that the busy junction leading on from a blind-bend had the potential to cause fatal and non-fatal injury. He further cited the risks posed to users, most notably to children, of the footpath leading to Acorn Way as a result of tight vehicular access to the site.

Councillor D M Carter seconded the motion for the refusal of planning permission.

Councillor J Kaufman stated that he was of the opinion that the proposal amounted to an over-intensive use of the site, referring to existing difficulties experienced in respect of limited car parking facilities. For the aforementioned reasons, as outlined by Councillor D M Carter, he supported the motion for refusal of planning permission.

Councillor Mrs H E Loydall advised that Members ought to be minded to provide material planning reasons upon which to base any decision that could be justified upon any prospective appeal. With reference to the sequential test as referred to in Core Strategy Policy 2 in the report (at page 20), the Member was of the opinion that proposed scheme's 300 m² size would have a "significant adverse impact" and therefore should be refused in accordance with the same. It was also stated that the proposal did not constitute a "new small scale local shopping opportunity" as existing local amenities already fulfilled the "everyday needs of local people" (at page 21). She further stated that the sequential test's requirement to retain primary shopping amenities in the primary town centre had failed to be met in regard to the proposed scheme's location. The Member further raised three highway concerns in respect of: the site's ill-positioning on a junction entertaining potential hazards already aforementioned; the inexpedient access of the site by HGV/LGV's; and the possible two-year implementation and subsequent unenforceability of the TRO. Upon those considerations, the Member stated that the application should be refused planning permission.

Councillor T Barr echoed the advice given by Councillor Mrs H E Loydall, adding that the proposed scheme was neither necessary to nor wanted by local residents whose wishes ought to be respected. It was said there was a good social amenity already offered in the area and that the reputation of the Cuisine of India proceeded itself. The Member stated that he supported the motion for refusal of planning permission.

Councillor R F Eaton raised a concern as to the acute access to the site by HGV/LGV's citing his experience as a Class 1 Driver Category C+E licence holder. He also sought clarification as to the nature of the restaurant's amenity/utility-areas proposed for demolition. With reference to the site-plan as detailed on the presentation, the Planning Control Manager identified the approximate 12 m² affected, including: an open-yard/outdoor area, staff W/C and ancillary storage areas (or parts thereof).

The Chair asked if the proposed building's position would preclude any overlooking from Kelmarsh Avenue. He also raised a concern in respect of the development's creation of a narrow-access and unlit cul-de-sac to the rear of the site, further enquiring into the implications for anti-social behaviour and what mitigating measures could be taken. The Planning Control Manager advised any views from Kelmarsh Avenue would be restricted by the proposed building. Mitigation measures were said to potentially include the installation of CCTV achieved via a planning condition, if necessary. It was advised that on balance, the creation of a cul-de-sac did not give rise to security or access concerns.

The Chair sought the Planning Control Manager's considered opinion upon the remoteness of the car park in relation to the front of/entrance to the proposed store and the safety concerns implied therein. The Planning Control Manager advised that although this aspect of the application was not ideal, it was nevertheless sufficient and did not consider the arrangement to be unsafe.

Councillor D A Gamble sought clarification as to whether the sequential test as referred to in Core Strategy Policy 2 and mentioned by Councillor Mrs H E Loydall provided proper grounds for refusal of planning permission. The Chair advised that the reasons for refusal would be summarised by Councillor Mrs L M Broadley.

Councillor G A Boulter reiterated the need for a decision to be made on material planning grounds. The Member reaffirmed the concerns in respect of: access of the site by HGV/LGV's; the remoteness of the car park from the proposed store's entrance; the over-intensive use of the site with reference to Core Strategy Policy 2; and the limited availability of customer parking facilities. He further stated that it was not advisable to proceed upon highway grounds if Members were minded to refuse the application planning permission.

Councillor Mrs H E Loydall stated that the remoteness of the car park may further still encourage patrons to park inconsiderately at the front the proposed store.

The Planning Control Manager affirmed that there was no through access route to the car park between the Cuisine of India and the proposed building.

In earlier moving the application for refusal of planning permission, Councillor Mrs L M Broadley summarised the reasons for refusal of planning permission as follows:

1. The proposal would engender a number of highway safety concerns;
2. The proposal would result in the overdevelopment of the site and loss of open space around the existing building;
3. The proposed retail use would harm the vitality and viability of Wigston town centre and the Kelmarsh Avenue local centre;
4. The development would result in an area to the rear of the development which would have potential to encourage anti-social behaviour as a result of the lack of overlooking of this area;
5. the route and manoeuvring required for delivery vehicles required to

service the development is inadequate, would lead to undue disturbance to the residents to the north of the site, and would lead to conflicts between cars and delivery vehicles or would encourage delivery vehicles to unload from the adopted highway;

In earlier seconding the application for refusal of planning permission, Councillor D M Carter agreed with the aforesaid reasons in terms of their cumulative impact.

The Planning Control Manager reminded Members that refusal of planning permission should only be given if material planning concerns or considerations cannot be mitigated by way of a planning condition or an agreement pursuant to the Town and Country Planning Act 1990, Section 106. In respect of highways, he advised that such a unilateral undertaking would realise the implementation of the TRO fully addressing any concerns. It was advised that any resistance to a proposal under the Policy Framework should only be warranted if a severe impact to health and safety is apparent and this was not the judgement of the Highway Authority. He therefore strongly recommended that any highway considerations be excluded from the grounds for refusal. In respect of over-intensive use/development of the land, he stated that the building sat within the confines of the existing site with no adverse street impact: however, the impact of limited car parking facilities was to be considered under this heading. It was said the area surrounding the restaurant was not designated as an "open-space" in accordance with the Council's planning policies. In respect of the sequential test as adopted in Core Strategy Policy 2, it was advised that the size of the proposed store in planning terms was "small" and therefore below the retail assessment threshold: as such, it was said that no requirement for a sequential test existed and that parts of Core Strategy Policy 2 were not applicable. It was restated that scheme's location within a designated local centre area and retail impact fully accorded with the principles of the National Planning Policy Framework and the Council's adopted Core Strategy and that any reasons based on competitions grounds, in respect of the impact upon vitality and viability, ought to be excluded from Members' considerations. In respect of anti-social behaviour, he advised that no antecedents of the same were noted and that mitigating measure may be adopted as a planning condition. In respect of site accessibility, with reference to the technical tracking plan as detailed on the presentation, it was reported that access to the site by a 10m HGV rigid vehicle was possible in a forward gear albeit being a tight manoeuvre or series of manoeuvres. In respect of car parking facilities, it was said that in the absence of any serious highways safety concerns there was no planning reason to seek refusal on that ground.

The Planning Control Manager reiterated that Members ought to ground their decision solely upon this application's merits.

Councillor Mrs S Z Haq sought clarification as to whether the sequential test as adopted in Core Strategy Policy 2 (at page 20) simply applied in principle to "new retail developments" irrespective of size. The Planning Control Manager advised that this aspect could not be examined in isolation and that reference to the National Planning Policy Framework makes clear that size is a relevant consideration.

Councillor G A Boulter questioned whether the proposed scheme's design

was sympathetic to the street-scene and if it sought to depart from open-space corners (without screening) that were characteristic of the area. The Planning Control Manager advised that the proposal was for a lower-profile building with an away-sloping roof of a brick and tile appearance mirroring that of the adjoining restaurant in relation to style, materials and palette. It was said that the building on an open-space corner would have some impact to the area's character however may not necessarily be considered as "adverse" vis-a-vis a mere "change".

Councillor Mrs L M Broadley added the following reason for refusal of planning permission:

6. The building will have an adverse impact on the street-scene by reason of its siting on a prominent corner with no screening.

Councillor Mrs L M Broadley withdrew the reason that the proposal would engender a number of highway safety concerns (at 1 above) for refusal of planning permission.

Councillor D M Carter agreed with the aforesaid addition and withdrawal of reasons.

Councillor Mrs H E Loydall requested that should Members be minded to permit the application, that the store's trading hours (at page 21) for Sunday and Bank Holidays be revised back so as to not further disadvantage neighbouring residents.

RESOLVED THAT:

The application be refused planning permission for the aforementioned reasons.

Votes For	12
Votes Against	1
Abstentions	1

THE MEETING CLOSED AT 9.02 PM



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CHAIR
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THURSDAY, 21 JANUARY 2016
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